



European Ombudsman

Report on visits to Agencies

December 2014

EN



Report¹

1. Introduction

There are no simple answers to the questions "what is an EU agency?" and "what do EU agencies do?" The term "EU agency" is used to refer to a variety of bodies set up at different times, by different legal instruments and for different reasons².

The Europa website http://europa.eu/agencies/index_en.htm lists over 40 agencies. It divides them into four groups:

- decentralised agencies
- executive agencies
- EURATOM agencies
- European Institute of Innovation and Technology (EIT)

This does not, however, constitute a systematic, or authoritative, scheme of classification.

Only the second category groups together similar entities. The six executive agencies have a common legal basis and similar arrangements for governance and accountability, which are set out in a Regulation³. They are established (and could be abolished) by Commission decision.

The Europa website lists 37 so-called "decentralised" agencies⁴, three of which are listed in a sub-category of "agencies under the Common Security and Defence Policy". These agencies are decentralised in a geographical sense: all but two of them are located away from the main EU institutions in Brussels and Luxembourg.

Unlike executive agencies, "decentralised agencies" are not established under a general legislative framework. Each has its own legal basis. Not all of them have the word "agency" in their name. Other names include "centre", "authority", "office", "institute" "foundation" and "unit"⁵.

¹ This report is presented by the OII co-ordinator, who wishes to thank Elpida Apostolidou (SG trainee) for her valuable help in drafting the Report, as well as the colleagues responsible for the visits who have provided many useful ideas, notably in relation to Sections 5 and 6 below.

² See generally, *The Evaluation of the EU decentralised agencies in 2009 Final Report Volume I Synthesis and prospects*, December 2009

http://europa.eu/agencies/documents/synthesis_and_prospects_en.pdf

The Joint Statement of the European Parliament, the EU Council and the European Commission on decentralised agencies (19 July 2012) also recognises that "(t)he establishment of agencies was done on a case by case basis and has not been followed by an overall vision of their role and place in the Union". http://ec.europa.eu/commission_2010-2014/sefcovic/documents/120719_agencies_joint_statement_en.pdf

³ Council Regulation 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, 2003 OJ L 11 p. 1.

⁴ Two of which are "in preparation".

⁵ E.g., European Centre for the Development of Vocational Training; European Food Safety Authority; Community Plant Variety Office; European Institute for Gender Equality; European Training Foundation; the European Union's Judicial Cooperation Unit.



The differences of names do not correspond in any systematic way to function, or to arrangements for governance and accountability. Some of the decentralised agencies have, broadly speaking, a regulatory role (e.g. the European Aviation Safety Agency). Others have specific operational tasks (e.g. the Office for Harmonisation in the Internal Market). A third group of agencies are centres of expertise in specialised fields, with advisory and information-gathering functions (e.g., the European Environment Agency). Yet others are primarily involved in facilitating and co-ordinating cooperation between the Member States' authorities in specific fields (e.g. the European Agency for the Management of Operational Cooperation at the External Borders - FRONTEX).

2. The Ombudsman's programme of visits to agencies

In 2011, the European Ombudsman launched a programme of visits to EU agencies, with the aim of promoting good administration and sharing best practice. The programme focused on "decentralised" agencies.

The Ombudsman visited fifteen such agencies in the period 2011-2013: the European Medicines Agency (EMA), the European Banking Authority (EBA), the European Police College (CEPOL), the European Environment Agency (EEA), the European Maritime Safety Agency (EMSA), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Centre for the Development of Vocational Training (CEDEFOP), the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND), the European Police Office (EUROPOL), the European Union's Judicial Cooperation Unit (EUROJUST), the European Systemic Risk Board (ESRB)⁶, the European Network and Information Security Agency (ENISA), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), the European Chemicals Agency (ECHA), and the European Institute for Gender Equality (EIGE). The inquiry concerning EIGE was ongoing when this Report was finalised.

The following issues were addressed during the visits: (i) Initial contacts with the public; (ii) transparency, dialogue and accountability; (iii) recruitment; (iv) tenders and contracts; (v) conflicts of interest.

3. Procedure

The visits were formally carried out on the basis of the Ombudsman's competence to conduct own-initiative inquiries. The usual procedural guarantees relating to inquiries therefore applied. Following each visit, the Ombudsman informed the agency of the findings in writing. If any specific suggestions were made, the agency was asked to inform the Ombudsman of any follow-up action. Depending on the agency's response, the Ombudsman

⁶ The ESRB took the view that it is not an "EU agency" because it is not listed as such on the Europa website and because of its close relationship to the European Central Bank. The ESRB did not, however, contest that it falls within the Ombudsman's mandate.



either closed the inquiry, or took further steps, for instance, by issuing formal recommendations.

4. Overview of results⁷

A. Initial contacts with the public

Languages

The Ombudsman called on several agencies to make the homepage of their website, as well as information on their functions and language policy, available in all EU official languages. By greeting citizens who visit the website in their own language and explaining its functions to them, an agency can demonstrate that it recognises that all EU citizens have a legitimate interest in its work.

In most cases, the agencies took on board the Ombudsman's suggestions. By way of example, EBA's website now includes a dropdown menu from which information about its role and main tasks is easily accessible in the EU official languages.

Complaint guidance

The Ombudsman encouraged the agencies to make the right to complain to the Ombudsman more visible on their website and to ensure timely complaint-handling internally. In response, EMA indicated that it had made the right to complain to the Ombudsman more visible on its website, while EBA allocated additional staff resources to complaint-handling. ECHA amended its Code of Good Administrative Behaviour to add an explicit reference to the Ombudsman.

European Code of Good Administrative Behaviour and Public Service Principles

The agencies were encouraged to make the European Code of Good Administrative Behaviour, as well as the Ombudsman's Public Service Principles available on their websites. ENISA replied by providing a brief description of the public service principles in the relevant section of its website and providing a link to the Ombudsman's website. Eurojust published the document both on its website and on its intranet site, while Europol provided a link on its website. Other agencies agreed to make the Code more visible, and thus more accessible to citizens, on their websites.

B. Transparency, dialogue and accountability

The Ombudsman made a range of suggestions to the agencies to promote greater transparency and to give effect to the citizen's fundamental right of

⁷ The examples given in this section are illustrative and not intended to provide a comprehensive account of the visits. Detailed information regarding these inquiries is available at: <http://www.ombudsman.europa.eu/en/activities/visits.faces>. Links to the Ombudsman's decisions closing the inquiries relating to these visits are provided in the Annex.



public access to documents. Among the key improvements resulting from the Ombudsman's visits are the following:

Rules on public access

EBA proceeded to the timely adoption of rules on public access to documents and took the necessary measures to ensure a proactive information policy. By way of example, its registration forms for meetings now include a statement that the names of participants may become public.

ENISA dedicated a section of its website to matters concerning access to documents with links to both Regulation 1049/2001 on public access to documents and ENISA's implementing rules in this area. It also agreed to draft an annual report on access to documents and committed itself to setting up a public register. Similarly, ESRB created a specific section on its website containing information on the rules applicable to requests for access to documents, as well as the contact details of the person responsible for dealing with such requests.

In terms of improving the handling of public access requests, Frontex committed itself to changing its practice of having the same person deal with both the initial and confirmatory applications for access.

Public register and direct access to documents

Following the Ombudsman's visit, Europol committed itself to include a new section in its annual report on the handling of requests for public access to documents. It also agreed to establish a public register, as did Eurojust and Frontex. EMSA also agreed to examine how best to establish a public register and confirmed that, once it had implemented the relevant obligations, it would be in a position to report annually on cases in which it refuses access to documents. EMCCDA explained that it would include in its draft Work Programme the establishment of a public register and that it was planning to include in its General Report of Activities a report on the cases in which it had refused access to documents. ECHA agreed to make its annual report on the handling of requests for public access prominently available on its website.

Although EEA proceeded to the online publication of the relevant annual report, it did not initiate the process to introduce a public register. In the spirit of sharing best practice, the Ombudsman encouraged EEA to contact other EU agencies to learn from their experience in this area.

Finally on this issue, Cedefop committed itself to provide direct access to a number of documents identified as being of interest to the public.

Overriding public interest

EMA agreed that the overriding public interest test should be the paramount criterion driving the Agency when taking a decision on disclosure of a document or information, not only on request, but also proactively.



C. Recruitment

Remedies

The Ombudsman encouraged the agencies to inform candidates of their right to challenge an unfavourable decision in this area, for example, a decision excluding them from a competition. ENISA responded by amending its vacancy notice template as suggested by the Ombudsman. The vacancy notices published on Cedefop's website now include information on the possibility to complain to the Ombudsman, under the heading "appeal procedures". In its 'General Information for Recruitment' webpage, EMSA clearly explains that applicants for its recruitment procedures may complain to the Ombudsman. Similarly, Europol amended its Recruitment Guidelines to include a specific section which explains that candidates may complain to the Ombudsman about alleged maladministration or file an appeal before the EU Civil Service Tribunal. Frontex explained that the information about the possibility to lodge a complaint with the Ombudsman will be added to the vacancy notice template and in the recruitment section of Frontex's website.

Transparency

The Ombudsman advised agencies to reconsider their 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. The Ombudsman subsequently noted that this issue raised a number of questions, with some of the agencies seeking guidance as to the best approach to be adopted. It was thus decided to initiate an own-initiative inquiry concerning the issue of disclosure of the names of selection board members. This inquiry ended with 'Good practice guidelines'⁸ issued to the agencies in relation to this matter, to which the vast majority of agencies responded most constructively.

D. Tenders and contracts

The Ombudsman suggested that the agencies include a reference to the Ombudsman in their notification letters and contracts, as well as in their calls for tender, or on their website. These suggestions were implemented by the relevant agencies. ECHA stated that it will 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. Eurojust inserted the relevant text on its webpage on procurement procedures, while Frontex updated its model letter to unsuccessful tenderers which now contains information about the role of the Ombudsman in receiving complaints from tenderers and also the relevant Internet address. EMCDDA and EMSA committed themselves to indicating explicitly in their calls for tender that the Ombudsman constitutes a possible review mechanism in case of disputes between tenderers and awarding authorities. For its part, ESMA explained that its updated 'Guidelines for Tenderers' provide for some general instructions on

⁸ The Good Practice Guidelines are available at:
<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54521/html.bookmark>



how to submit tenders, including a clear reference to both the Court of Justice of the European Union and the Ombudsman.

E. Conflicts of interest

The Ombudsman suggested that, in revising rules on conflict of interest and ethics generally, agencies should have regard to the work of the OECD on the importance of avoiding "apparent" as well as "real" conflicts of interest. They could also consider putting a draft of any revised rules on the website and inviting public comment before the rules are finalised.

Following the Ombudsman's suggestions, EMA revised its policy and opted to put online the declarations of interests of experts contained in its database, as well as more information on all conflicts of interest declared during a scientific review process. It also undertook to draft a policy and consult with stakeholders on the publication of information on how to report improprieties or other issues that may raise ethical concerns.

EMSA stated that it had 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. As regards recruitment and procurement procedures, EMSA explained that it has developed training, as well as processes aimed at avoiding conflicts of interest. For instance, 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.

EMCDDA explained that it had adopted 'Internal Guidelines for the Exit Procedure for Staff Leaving the EMCDDA' and emphasised that these revised guidelines include a Declaration Form, which contains a declaration of no conflict of interest, and for updated written procedures for handling such declarations.

As a follow-up to the Ombudsman's suggestion that EEA staff provide the Agency with their full CVs, in order to allow it to determine whether a conflict of interest situation exists and, where possible, the Agency publish CVs and declarations of interest, EEA introduced a process to review staff CVs to assess whether a conflict of interest situation could exist and made the CVs of Senior Managers and Scientific Committee members available to the public on the Agency website.

ECHA was invited to report on the concrete measures it had adopted on the conflict of interest issues identified by the Court of Auditors. The Agency pointed out that a specific procedure had been put in place to ensure that potentially conflicting interests are checked before tasks are assigned to staff. In response to suggestions from the Ombudsman, ENISA expressed its willingness to develop templates for Declarations of Interest of the Executive Director and seconded national experts, while a section entitled "Declaration of Interest" was included on its website. Following the same recommendation from the Ombudsman, ESRB stated that its Head and the Deputy Head have



signed a template on Declarations of Interest, which is similar to the template used by the Ombudsman and added that the declarations have been put on the ESRB website.

5. Internal reflections

A. Added value of the visits

According to members of the Ombudsman's staff who prepared and participated in these visits, the following are the main benefits of the exercise.

- i) Concrete improvements for citizens and organisations who are in contact with the agencies, as outlined in section 4 above.
- ii) Establishment of good contacts with staff working in the agencies. The visits resulted in much better cooperation than what can be achieved by corresponding in writing or by telephone. The visits proved particularly useful in the case of agencies for which the Ombudsman had not previously dealt with complaints, for example, Frontex.
- iii) Building knowledge and awareness on both sides

Preparing the visits broadened and deepened the knowledge base about agencies among the Ombudsman's staff, who examined the legal basis and the website of the agency concerned, as well as other relevant material such as reports of the Court of Auditors and reports and resolutions of the European Parliament, in order to identify the main issues of concern and interest. With regard to learning by the agencies, some signaled that the Ombudsman can help provide relevant expertise and guidance on a range of issues. This is particularly important, where certain categories of staff are in short supply (for example, only one legal advisor to deal with a myriad of issues). The visits also proved useful in the sense that they allowed a benchmarking between the agencies.

B. Points for improvement

i) Review the list of issues

Examining the full list of issues outlined in Section 2 above in relation to each agency proved resource intensive for the Ombudsman's staff. It could be preferable in the future to tailor the list to the agency in question, focusing on the most important issues.

ii) More in-depth discussion

There was often not enough time to examine the issues in depth and to explore how exactly the agency in question works in practice. Some agencies viewed the visits as a type of Ombudsman "inspection" to which they needed to provide the "right" answers.



iii) Staff involvement

It was felt that agency staff should benefit more from the visits by having the opportunity to engage with the Ombudsman's staff and profit from our expertise in key areas. In the case of one agency, for example, staff members were unaware of the Ombudsman's visit. Meeting with staff was highlighted as particularly important in the case of one agency, where staff learned of the remedies they have at their disposal in the event of problems. One colleague suggested, on the other hand, that the Ombudsman's meetings with staff committees be discontinued as the added value was not evident.

6. Future policy

The following ideas could be considered as we shape our future policy towards the agencies:

- i) the possibilities of cooperation and coordination with other EU institutions involved with agencies: in particular, the Commission⁹ (which is represented on management boards) and the Court of Auditors (drawing on the experience of cooperation in relation to issues of conflicts of interest at EFSA);
- ii) whether the Ombudsman should seek to engage with the management boards¹⁰ of agencies as well as Directors;
- iii) the Ombudsman could focus on one particular issue (a "thematic approach", such as that adopted in the own-initiative inquiry in relation to disclosure of the names of selection board members) and benchmark it through the agencies. The outcome could be 'good practice guidelines' for the agencies in relevant areas, for example revolving doors or access to documents. The Ombudsman's recent correspondence with three of the four regulatory agencies in relation to their Transparency Initiatives can also be mentioned;
- iv) if the Ombudsman continues with a programme of visits, it would be useful to shift the focus of visits to specific issues. Visits could focus on issues of most concern and relevance to the agency in question (a "one agency - one issue" approach). Alternatively, the existing list could continue to be used but tailored to focus on the most pertinent issues. This should be decided on a case by case basis. When visiting an agency for a first time, a broader approach would be advisable. A follow-up visit, even after a number of years, can be better focused on the specifics;
- v) linked to the preceding point, we should examine whether future proactive work with agencies could involve a more strategic focus on key governance issues;

⁹ The fact that the Commission issued a proposal endorsing the Ombudsman's recommendations in the own-initiative inquiry on disclosure of the names of selection board members was cited as important and relevant in this regard.

¹⁰ The need for the Ombudsman to maintain her independence was, however, mentioned in relation to points i) and ii).



vi) we should consider how we can best mobilise the learning by our staff resulting from these visits in developing future proactive work involving the agencies¹¹;

vii) we should examine ways of delivering cost-effective training for agency staff. One colleague suggested that 90 minutes might be set aside at the annual Inter-Agency Legal Network meeting for the Ombudsman to share expertise (as happened recently on access to documents). We could also consider preparing training materials, such as audiovisual material, on particular subjects for use within the agencies (e.g. guidelines on tenders, good complaint-handling, dealing with correspondence from citizens, etc). Use of videoconferencing could also be explored for agencies that are the subject of a lot of complaints or new agencies that could benefit from an early meeting with Ombudsman staff on issues like recruitment;

viii) develop and maintain contacts at all levels. The Ombudsman's Legal Officers should maintain and develop personal contacts with agency colleagues, while contacts should be established at other levels within the Office too. Specifically, middle management could be encouraged to visit agencies to share expertise (e.g. recent visit to EIGE). Heads of agencies and accompanying staff members could be invited to the Ombudsman's Office in Strasbourg or Brussels;

ix) in relation, notably to executive agencies, we could produce a study of complaints concerning research applications leading to possible good administration guidelines (also relevant to other institutions and agencies). The outcome of the on-going OII on the absence of a review procedure in EASME will also be relevant;

x) re-think how the results of proactive work with agencies are made visible to the public, agency stakeholders and other EU institutions;

xi) the Ombudsman should seek to address the Heads of Agencies, collectively, to share these ideas and invite their feedback as to what would be useful for them.

¹¹ A separate document is being prepared by Alina Nedea in relation to the follow-up and monitoring of specific agencies by Legal Officers.



Annex: Link to Ombudsman decisions

[European Medicines Agency](#) (EMA)

[European Banking Authority](#) (EBA)

[European Police College](#) (CEPOL)

[European Environment Agency](#) (EEA)

[European Maritime Safety Agency](#) (EMSA)

[European Monitoring Centre for Drugs and Drug Addiction](#) (EMCDDA)

[European Centre for the Development of Vocational Training](#) (CEDEFOP)

[European Foundation for the Improvement of Living and Working Conditions](#) (EUROFOUND)

[European Police Office](#) (EUROPOL)

[European Union's Judicial Cooperation Unit](#) (EUROJUST)

[European Systemic Risk Board](#) (ESRB)

[European Network and Information Security Agency](#) (ENISA)

[European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union](#) (FRONTEX)

[European Chemicals Agency](#) (ECHA)



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