

Parma, 13 December 2011
Ref. OR/DD/SG/nm (2011) **out-6124906**

Mr P. Nikiforos Diamandouros
The European Ombudsman
Avenue du President Robert Schuman, 1
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Complaint 0775/2010/ANA

Dear Mr P. Nikiforos Diamandouros,

I hereby acknowledge your letter received on 8 December 2011 (ref. 0775/2010/ANA S2011-147021) in which you request the European Food Safety Authority (EFSA) to provide an opinion regarding the report containing the draft recommendations issued by the Ombudsman. In this regard, please allow me to inform you as follows.

1. Strengthening of EFSA's internal regulatory framework

EFSA respectfully submits that the case in question on which the Ombudsman performed its enquiry occurred in 2008-2009. However, based on the experience gained therein and taking account of the need of EFSA to address public perception of potential conflicts of interest of its staff, EFSA has strengthened its internal rules aimed at regulating conflicts of interest, cooling off periods and, more generally, ethics and integrity matters of relevance to its staff.

More in detail, firstly, on **7 December 2010**, EFSA adopted a dedicated decision which clarifies in detail the steps and obligations of officials, temporary agents and contract agents when leaving employment. The procedure ensures the implementation of the obligations deriving from Articles 16(2), 17 and 19 of the Staff Regulations. Staff members leaving EFSA are required to sign a comprehensive declaration of honour stating that they are aware of continuing obligations to EFSA in particular under Articles 16, 17(2) and 19 of the Staff Regulations and that they acknowledge that EFSA reserves the right to undertake all necessary actions in order to ensure the implementation of these obligations. Should staff members intend to engage in an occupational activity within two years from leaving service with EFSA, they are provided with a form requiring them to indicate:

- a) a description of their activity during their last three years of active service at EFSA. This information can be replaced by their job description;
- b) the name, address and telephone number of the future employer;
- c) the future employer's fields of activity;
- d) a description of the activity that the former staff member is likely to take up with the future employer, including information on the position they are supposed to occupy and the expected duration of that activity; and

- e) any link between the former staff member's future activity with their function at EFSA.

Additionally, where permission has been granted, former staff members shall inform EFSA without delay about any changes in the circumstances linked to their new or any other future post within the period of two years after leaving service. Subsequently, the Appointing Authority may modify the conditions already granted or withdraw the permission, as appropriate. In case a former staff member ignores or breaches any decision issued by the Appointing Authority, EFSA may take any appropriate action to enforce its decision and recover any damages resulting from the former staff member's actions or omissions. EFSA is aware of the need of follow up with the European Data Protection Supervisor pursuant to Article 27 of Regulation (EC) No 45/2001.

Secondly, as of **November 2010**, the Authority has organised on a regular basis training courses on ethics and integrity for its staff members. These courses, mandatory for all staff, are made available in EFSA's annual training programme and complement the fundamental information on ethics and integrity provided on the first working day as part of EFSA's induction programme.

In **December 2010**, EFSA adopted a Practical Guide to Staff Ethics and Conduct, which is distributed and can be downloaded from a dedicated section of EFSA's intranet. The Guide, built on a similar tool developed by DG HR of the European Commission, provides an explanation of the fundamental obligations and limitations related to ethics and integrity as laid down in the Staff Regulations. It provides guidance in layman's language on issues ranging from relations with the public, to behaviour at work, individual obligations, how to prevent problems etc. The Guide is particularly relevant for EFSA staff members, many of whom have a scientific background and remain in the Union institutional environment for a limited period of time. For this reason, the guide has been tailored to EFSA's needs, e.g. making reference to matters of particular relevance for its staff, such as invitations to conferences, speeches, publications and other forms of scientific publications. Finally, there is a specific section on obligations after leaving the service.

Since December 2010, EFSA has put in place and updates a register of activities undertaken, or to be undertaken, by its former staff within two years of leaving service with the Authority.

On **29 July 2011**, EFSA appointed an ethics advisor, who advises staff members and other actors of the Authority's bodies on the substance and the procedures regarding questions related to ethics, conduct and integrity, such as conflicts of interests, planned activities outside the job duties, behaviour and freedom of expression inside and outside the Authority, publication of articles, obligations after leaving the service, etc. In that context, EFSA has created a functional mailbox for ethics and integrity questions, in order to facilitate access to the ethics advisor.

Since 2007, EFSA has a set of rules and Policy on Declarations of Interest applicable to all actors of the Authority. In 2010, EFSA started a thorough process aimed at assessing its performances in implementing that framework and identifying possible improvements. This process included more than three years of experience in the implementation of the 2007 Policy on DoIs, as well as the recommendations put forward by independent contractors and auditors delivering respectively a benchmarking report¹, an external review of the implementation² and audit reports.

¹ Independent report of factual findings in connection with the implementation of EFSA policy on Declarations of Interests in certain Scientific Panels.

² Comparison between the tools ensuring EFSA's independent scientific advice and the instruments in use by organizations similar to EFSA, final report, February 2011.

Following a public consultation undertaken from July to mid September 2011 and the organisation of a Stakeholder Consultative Workshop on Independence on 12 October 2011, which resulted in the submission of more than 110 comments and the participation of more than 140 interested parties, EFSA aims at adopting a new, comprehensive and sophisticated Policy on Independence and Scientific Decision Making Processes, including a section dedicated to staff members, **by the end of 2011**.

2. The draft Recommendations

In the report, the Ombudsman outlines three **draft recommendations** addressed to EFSA:

1. EFSA should strengthen its rules and procedures and should make clear to staff that negotiations with prospective employers during the contract with EFSA are to be declared as potential conflicts of interest and treated by the Authority accordingly;
2. EFSA should acknowledge that it failed to observe the relevant procedural rules and to carry out a sufficiently thorough assessment of the potential CoI arising from the move of a former staff member to a biotech company; and
3. should future cases arise, EFSA should: i) obtain sufficient information including as a minimum a proper account of the tasks carried out at EFSA, a precise description of the proposed new employment and possible links between the new and the previous employment; ii) carry out a thorough assessment; and iii) properly record the results of this assessment.

3. EFSA's opinion on the draft recommendations

Having taken due account of the draft recommendations summarised under § 2 above, and of the submissions provided by the complainant, EFSA's opinion *vis-à-vis* the report of the Ombudsman is the following:

On the **first draft recommendation** EFSA submits that, based on the experience gained therein and taking account of the need of EFSA to address public perception of potential conflicts of interest of its staff, it has strengthened its rules and procedures regarding conflicts of interest of its staff, as described above under § 1. That notwithstanding, EFSA also commits to clarifying in its rules the guidance provided by the Ombudsman that negotiation with prospective employers during the contract with EFSA are to be treated by the Authority and by its staff as potential conflicts of interest.

On the **second draft recommendation**, the Authority acknowledges that the system in place in 2011 to implement Article 16 of the Staff Regulations is more robust than the one in force in 2008 and 2009 since it provides procedural steps and allows for mitigating measures based on a sufficiently thorough assessment of the potential conflict of interest that would be applied for a similar case today. Further improvements are foreseen following the adoption of the forthcoming Policy on Independence.

On the **third draft recommendation**, EFSA respectfully submits that the rules adopted in December 2010, described under § 1, already comply with this draft recommendation. That notwithstanding, should cases similar to the one at issue here arise in the future, the Authority commits to i) obtain sufficient information; ii) carry out a thorough assessment thereof; and iii) properly record the results of this assessment. EFSA also underlines that the draft recommendation above has already been practically applied and implemented in the only case that occurred since the entry into force of the strengthened rules and procedures. In this case, a former staff member

moved to the private sector in a role overlapping with his previous tasks at EFSA. EFSA processed the information from the staff member in accordance with the implementing rules, carried out a thorough assessment of the information provided and concluded with a set of limitations that the person is required to respect for a period of one year from the date of resignation. The conclusions were notified by registered letter to the concerned person. In more detail, the Authority required him not to lobby his former colleagues, otherwise contact them or the external experts cooperating with EFSA on the relevant subject matter for a period of one year after taking up his new assignment.

I trust that the above responds to the report issued on 8 December 2011. In line with EFSA's policy on transparency this letter will be published on our website.

Yours sincerely,

Catherine Geslain-Lanéelle