European Ombudsman

0775/2010/ANA
S2010-126938

P. Nikiforos Diamandouros
European Ombudsman

Ms Catherine Geslain-Lanéelle
Executive Director
European Food Safety Authority
Largo N. Palli 5/A
43121 Parma
ITALIE

Strasbourg, 04 -10- 2010
Complaint 775/2010/ANA

Dear Ms Geslain-Lanéelle,

On 23 July 2010, EFSA sent me its opinion on the above complaint. I forwarded the opinion to the complainant, Testbiotech e.V., represented by Mr Christopher Then, and received its observations on 20 August 2010.

To help me continue inquiring into this complaint, I would appreciate it if EFSA could provide additional information on the following issues:

EFSA stated in its opinion that "*The Appointing Authority thus assessed the information provided by Dr Renckens.*" In its observations, the complainant argues that EFSA did not react to Dr Renckens' move to Syngenta until the matter was brought to its attention in November 2009. I would be grateful if you could provide me with any available information documenting EFSA's assessment of the situation, for example e-mail exchanges, notes on the file, or a decision of the competent service within EFSA.

Moreover, in its opinion, EFSA stated that "*The Appointing Authority considered that her job was to manage the secretariat supporting EFSA independent scientific experts. In effect, she was not a decision maker in relation to agreeing conclusions on EFSA's scientific advice, for that by law is the exclusive role of the members of the GMO Panel. Nor did she take decisions on any authorisation or approval, as that is by law the role of the risk managers, not of EFSA. Therefore, the Appointing Authority raised no objections.*"

In order to enable me to obtain a better understanding of the tasks which Dr Renckens was carrying out while at EFSA, I would be grateful if you could provide me the following documents and/or information:

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1) The job advertisement to which Dr Renckens applied when she was appointed to her post.

2) Her application, including any annexes.

3) All her staff reports.

4) Any internal rules and/or guidelines relevant to the issue. More specifically, (a) any information/guidelines communicated to staff regarding conflicts of interest, and (b) any rules on how EFSA itself deals with conflicts of interest, such as the rules on who assesses them and how, and whether there is a conflict of interest in relation to Dr Renckens' activities following the termination of her service at EFSA.

I would like to thank you for the information you provided me in relation to the meetings which Dr Renckens had with EFSA in the two years following her departure. For the sake of completeness, I would be grateful if you also provided me with details of all internal meetings and meetings with external stakeholders (including any available minutes) in which Dr Renckens participated during the last 12 months of her employment at EFSA.

I would like to bring EFSA's attention to the fact that the information is requested in application of Article 3(2) of the Statute of the European Ombudsman[1] and Articles 5.1 and 5.2 of the European Ombudsman's Implementing Provisions[2]. If EFSA considers that any of the above requested documents is confidential, it should specify so and I will treat them as if they had been obtained by my services during an inspection. In accordance with Article 13.3 and 14.2 of the European Ombudsman's Implementing Provisions, neither the complainant nor the public will have access to them[3].

For the avoidance of doubt, EFSA should also be informed that any elements in its reply to the further inquiries which EFSA does not identify as confidential will be forwarded to the complainant.

Please find enclosed a copy of the complainant's observations, on which EFSA may wish to comment.

I would be grateful if your reply could reach me by 30 November 2010.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure:

- The complainant's observations

[1] http://www.ombudsman.europa.eu/resources/statute.faces#hl2

[2] http://www.ombudsman.europa.eu/resources/provisions.faces

[3] http://www.ombudsman.europa.eu/resources/provisions.faces

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20August 2010

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Dear Mr Diamandouros

Re: Complaint 775/2010/ANA/ S2010-124575

Thank you very much for sending EFSA's answer dated 23 July 2010 to Testbiotech. I would like to file the following observations:

EFSA states that Dr. Renckens was not making direct decisions on GMO market applications. Nevertheless, as a leading member of staff she would certainly have had many ways of influencing the work of the GMO panel (preparing decisions, drafting guidelines, having meetings with stakeholders). Since there was no cooling off period after she resigned her post, her specific contacts and knowledge were exceedingly relevant for her new job. It is unacceptable for EFSA to downplay the role of Dr Renckens simply to escape criticism of their management decisions.

EFSA states that Dr. Renckens informed the authority on 19 May 2008, after she already was employed by Syngenta. This means that she started her new job without having gained EFSA approval. The authority did not react to this breach of obligations by Dr. Renckens. Only in November 2009, after Testbiotech made a public communication, did EFSA react and send some notes to Dr. Renckens

reminding her of her obligations. This was not appropriate or sufficient to satisfy either the legal requirements or the timing.

Testbiotech therefore believes that EFSA's answer is not sufficient to answer the claims and allegations set out in your letter of 25 May 2010 S2010-121389. On the contrary, we consider EFSA 's answer to be more or less a confirmation that the authority failed to adequately address the issue of potential conflict of interest.

Our concerns have been heightened by the list provided by EFSA that shows a number of meetings between EFSA and biotechnology companies in which Dr. Renckens directly participated as a staff member for Syngenta. It seems that Dr. Renckens acted as a lobbyist at these meetings. (We also note that this list might be affected by failures since on 5 March 2009 two different meeting took place. It is not clear how Dr. Renckens managed to participate in both).

Dear Mr. Diamandouros, we are very happy to have the support of the European Ombudsman and we are aware that you have to deal with a complicated situation. We hope you will make a good decision on how to proceed with this case. We are concerned that the standards of transparency and independence of European institutions could be undermined if this case is considered to be normal procedure fulfilling all necessary requirements. Please let us know your further planning.

Thank you very much.