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The European Ombudsman
P. Nikiforos Diamandouros
1 Avenue du Président Robert Schuman
CS 30403
FR- 67001 Strasbourg Cedex
France

17 August 2012

Dear Mr Diamandouros

Complaint 0622/2012/ANA

Thank you very much for your letter from 31 July 2012, including the reply from EFSA dated 27 July 2012.

We are concerned that this procedure will fail to bring up necessary clarification, for two reasons:

- (1) The response from EFSA shows that the Authority tries to escape any substantial discussion about conflicts of interests.
- (2) We still think that your decision only to choose the period of time from 2009-2012 has to be put in question.

EFSA states that Harry Kuipers' engagement with ILSI ended in 2005. Mr. Kuiper, in his DOI from 2010, indicates that his engagement with ILSI continued until the end of 2010.

Testbiotech has no reason to believe that Harry Kuipers' DOI in 2010 was wrong and we therefore suggest that EFSA should list all contacts between Harry Kuiper and ILSI since 2005 that the Authority is aware of. EFSA should provide much more transparency about the contacts between Harry Kuiper and ILSI.

EFSA confirms that Harry Kuiper was active with ILSI until 2005, coordinating two reports for ILSI. From our point of view this confirmation is enough to indicate severe conflict of interests. As shown by the presentation as attached, Harry Kuiper was head of the GMO panel of EFSA since 2003. It is also shown it was exactly during that time between 2003 and 2005 that the GMO panel was developing its most relevant Guidance on risk assessment and issued its first

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opinions on genetically engineered maize. Since that time the EFSA's Guidance was updated several times, but the basic concept was never changed.

So we conclude from the answer from EFSA:

- it was maladministration of EFSA not to take action against the conflicts of interest of Mr. Kuiper in the period 2003 – 2005;
- Also in the period after 2005 it was wrong of EFSA not to take action action, not the least in the period between 2009 and 2012 when strong criticism emerged about the role of Harry Kuiper and his contacts with ILSI. Instead EFSA simply waited till the end of Kuipers regular term and did not engage in a detailed re-evaluation of the work of the GMO panel during the time Harry Kuiper acted as a chair;
- EFSA´s risk assessment of genetically engineered plants is still based on a concept developed under the responsibility of Harry Kuiper. We would argue that this should lead to re-evaluating the decisions made by the GMO panel from 2003-2012, including its basic concept of risk assessment.

A proper evaluation of the role of Harry Kuiper over the whole period from 2003-2012 is also of crucial importance for the EFSA´s new internal rules on independency. For example, under EFSA's new rules, Gijs Kleter is a member of the GMO panel, his mandate was just prolonged in 2012 and he even became vice-chair of the panel. This case, as far as we can judge, is similar to the one involving Mr. Kuiper. The Kuiper case should be investigated fully to be able to draw informed conclusions about other potential conflict of interests, now and in future.

To sum up, we are concerned of the attempt of EFSA in to avoid a sound investigation. We would like to urge the Ombudsman to stand firm on assessing the case in full depth and not limit the investigation only to the period from 2009-2012. We trust you will include in your assessment of our complaint all relevant facts tconcerning the work of Harry Kuiper as chairman of the GMO panel since he first took this post.

Yours sincerely



Dr. Christoph Then,
Executive Director Testbiotech e.V.

Attachment: Presentation of Mr. Harry Kuiper about work of EFSA

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