Testbiotech e. V. | Frohschammerstraße 14 | 80807 München

The European Ombudsman
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France

21.March 2012

COMPLAINT ABOUT MALADMINISTRATION

1
First name: Christoph
Surname: Then

On behalf of Testbiotech e.V.,
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2
Against which European Union (EU) institution or body do you wish to complain?
European Food Safety Agency (EFSA)

3
What is the decision or matter about which you complain? When did you become aware of it?
Mr. Harry Kuiper has been the Chair of the GMO panel since 2003 and EFSA has failed to take appropriate steps to avoid conflicts of interest apparent with this appointment. Harry Kuiper worked for many years with the International Life Sciences Institute (ILSI), which is funded by agrochemical companies and the food industry. He was a

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member of an ILSI task group that developed standards for the risk assessment of genetically engineered plants. These standards were partially adopted by the EFSA GMO panel in 2004, and have been applied to the risk assessment of genetically engineered crops ever since. EFSA has violated its responsibility to safeguard a high level of independence by allowing the Chair of the GMO panel to be involved in this task group and have permanent contact with ILSI, even more so as he chairs one of its panels. Furthermore, by allowing other experts with strong affiliations to ILSI to become members of the GMO expert panel in parallel, it is undeniable that ILSI has had an impact on the work of the GMO panel, which must be regarded as significant.

We became aware of this case in December 2010 (see report attached).

4
What do you consider that the EU institution or body has done wrong?

As stated in the "*Implementing Act to the Policy on Declaration of Interests, Procedure for Identifying and Handling Potential Conflicts of Interest*" (as attached, page 5) "*the role of the Chair of the Scientific Committee and Panels*" "*require separate assessment*".

Furthermore, it explains that:
"*Any Members that have one or more potential conflicts of interests should refrain from being a candidate for this role.*"

We think that in this case, the OECD definition (2007), should be applied. The definition is as follows:
"Conflict of interest occurs when an individual or a corporation (either private or governmental) is in a position to exploit his or their own professional or official capacity in some way for personal or corporate benefit."

In this context, the role of Dr Renckens should also be taken into consideration. She was head of the GMO unit from 2003-2008 and thereafter moved directly to Syngenta. She was one of the persons responsible for dealing with a potential conflicts of interest, especially in regard to the Chair of the GMO Panel.
As stated in the "*Decision concerning the establishment and operations of the scientific committee, scientific panels and of their working groups*" document (Article 25) it is one of the specific duties of the Secretariat of the Scientific Panels to ensure
"compliance with internal rules of the Authority such as those regulating the Declarations of interests, transparency et cetera."

One reason for EFSA´s management failing to take steps to remove Mr Kuiper from his position on the GMO Panel could be the close

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collaboration between Dr Renckens and Harry Kuiper. Both Mr Kuiper and Mrs Renckens may have been driven by conflicts of interest and this might have been the very reason why no steps were taken. Since this is only speculative we would encourage the Ombudsman to ask EFSA for documents that may shed light upon the reasons and provide some insight and evidence on how this matter was discussed internally, thereby giving answers as to why no steps were taken.

EFSA did not take any steps even after the Testbiotech report was published. The only thing that happened was a change in Harry Kuiper's Declaration of Interest (DOI): While in October 2010 his DOI stated he would have affiliations with ILSI from 2000 "till now" (attached), his DOI in March stated affiliations with ILSI till 2005 (attached).

In Testbiotech's view, even if the second DOI were correct (which is doubtful) this would not change anything. It remains evident that there was a conflict of interest in his first years at EFSA and that this should have been acted upon by the EFSA management.

5

What, in your view, should the institution or body do to put things right?

EFSA should have taken steps to prevent Harry Kuiper from becoming Chair or a member of the GMO panel. After he became Chair, he should have been removed after a short time and not have been kept as Chair of the panel from 2003 until 2012. At the very latest, EFSA should have taken action to safeguard its independence and start procedures to appoint a new Chair of the GMO panel after publication of the Testbiotech report.

EFSA should acknowledge that it has failed to act to prevent conflicts of interest especially in the case of Harry Kuiper, and implement effective measures to prevent similar conflicts of interest in the future.

6

Have you already contacted the EU institution or body concerned in order to obtain redress?

Yes. See attached communication with EFSA and the Commission.

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7

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Yes. See attached communication with EFSA

8

Has the object of your complaint already been settled by a court or is it pending before a court?

No

9

Please select one of the following two options after having read the information in the box below:

Please treat my complaint publicly

10

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Date and signature:

21.3.2012,

Attachments:

- Testbiotech report 2010 “European Food Safety Authority: A playing field for the biotech industry”
- Doi of Harry Kuiper 2010 and 2011
- Letter to the Commission, 21.12.2010
- Letter to EFSA, 21.12.2010

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