



P. NIKIFOROS DIAMANDOUROS

christoph.then@testbiotech.org

Mr Christoph Then
Testbiotech e.V.
Frohschammerstr. 14
München 80807
ALLEMAGNE

Strasbourg, 28 -07- 2010

Complaint 775/2010/ANA

Dear Mr Then,

Please find enclosed the opinion that I received from EFSA concerning your above complaint.

If you wish to make any observations on the opinion, please send them to me before 31 August 2010.

Please note that, if I do not receive any observations from you, I may close the case with a decision, based on the information you have already provided and EFSA's opinion.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

Enclosure: Copy of the opinion submitted by EFSA

EXECUTIVE DIRECTOR

Parma, **23 JUL 2010**
Ref. SG/DD/OR/nm (2010) out-5011311

Mr P. Nikiforos Diamandouros
The European Ombudsman
Avenue du President Robert Schuman, 1
CS 30403
F-67001 Strasbourg
France

Complaint 775/2010/ANA

Dear Mr P. Nikiforos Diamandouros,

I hereby acknowledge your letter dated 27 May 2010 (ref. 0775/2010/ANA S2010-121388) in which you request the European Food Safety Authority (hereinafter EFSA) to provide additional information regarding the grounds on which the Authority based its decision not to raise any objection to the move of a former EFSA staff member – Dr Suzy Renckens – to a Swiss based biotechnology company. In this regard, please allow me to clarify the following points.

When her contract with EFSA expired in March 2008, Dr Suzy Renckens was the head of EFSA's Unit providing the secretarial support to the Panel on Genetically Modified Organisms. This unit consists of EFSA staff members providing a permanent secretariat to the independent scientific experts appointed as members of the Panel by EFSA's Management Board.

It should be noted that by law¹ only the members of the GMO Panel are allowed to approve EFSA's scientific opinions on the applications submitted in the context of the authorisation procedures regulated by Regulation (EC) No 1829/2003 (the Genetically Modified Food and Feed Regulation) or by Directive 2001/18/EC (the Deliberate Release Directive). Furthermore, EFSA staff cannot be members of EFSA's scientific Panels, as it can be inferred from Article 28(4) of Regulation (EC) No 178/2002. In effect, pursuant to Article 28(5) of Regulation (EC) No 178/2002, the members of EFSA's Panels are appointed following an open and transparent call for expression of interest published on the Union Official Journal, on EFSA's website and in leading scientific publications. In order to implement in a coherent and structured manner the provision above, EFSA adopted a detailed decision which outlines in a transparent manner all the steps to be followed, and the criteria to be used, in the selection of the members of its Scientific Panels².

¹ Article 28(1) of Regulation (EC) No 178/2002, as last amended.

² Decision of the Executive Director concerning the selection of members of the Scientific Committee, Scientific Panels and external experts to assist EFSA with its scientific work, signed on 19.06.2009 and available at <http://www.efsa.europa.eu/en/keydocs/docs/expertselection.pdf>.

As in several other Union agencies, the vast majority of EFSA staff is employed with five years contract as Temporary or Contract agents³. They are engaged for a fixed period and their contracts expire after five years from the day in which they took effect, although they may be renewed pursuant to the relevant provisions of the Conditions of Employment of other servants of the Communities (CEOS)⁴. Under Article 16 of the EU Staff Regulations and Conditions applicable to the other servants of the Union, for a period of two years after leaving EFSA, former staff members are required to inform EFSA with respect to their intention to engage in an occupational activity, so that the Appointing Authority can consider whether that may lead to a conflict of interest.

Dr Renckens took up employment with Sygenta during May 2008 and on 19 May 2008 informed EFSA of that fact.

In accordance with Article 16 of the Staff Regulations and in line with common practice in Union Agencies and Institutions, the Appointing Authority thus assessed the information provided by Dr Renckens. 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 November 2009, EFSA checked again with Dr Renckens as regards her current employment status and reminded her of her obligations in relation to confidentiality.

The Staff Regulations and CEOS state that officials and other agents should refrain from any unauthorised disclosure of information received in the line of duty unless the information has already been made public or is accessible to the public. EFSA staff members are also bound by this obligation after leaving service, and they no longer have access to privileged information after departure. At no time has EFSA seen any evidence to suggest that Dr Renckens has breached her responsibilities as outlined above. If that were the case, appropriate action would be taken.

EFSA is committed to ensuring that the principles of independence and transparency are fully respected across all its activities and in particular in its interactions with third parties. EFSA continuously reviews its policies and procedures with regards to declarations of interest and confidentiality to ensure that they constitute an effective firewall against any potential breach.

In the second part of your letter, you formulate some additional requests, and notably, to provide you with all the correspondence and internal notes or briefings relevant to this case and with the details of the meetings the official at issue had with EFSA in the two years following her departure.

The correspondence involving EFSA and related to the case in question include:

1. a letter from EFSA signed by Mr Olivier Ramsayer (ref. OR/SG/DD/rl (2009-out-4499402) and addressed to Testbiotech N.V.;
2. Annex 1 to the letter above, an email from Dr Renckens to the team GMO at EFSA and members of the GMO Scientific Panel; and

³ For a definition of those categories, please refer to Conditions of Employment of other servants of the Communities, part of the Staff Regulations (Regulation no 31 (EEC), 11 (EAEC), laying down the staff regulations of officials and the conditions of employment of other servants of the European economic community and the European atomic energy community, as last amended).

⁴ Articles 8 and 85 of the CEOS, respectively.

3. Annex 2 to the letter above, an exchange of emails between Mr Olivier Ramsayer and Dr Renckens.

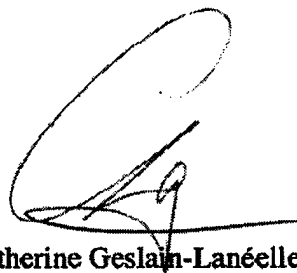
The documents above have been provided to Testbiotech N.V. in response to its requests to access to documents. You have received a copy of the documents above as part of the complaint at issue here.

Finally, for what concerns the details of the meetings Dr Renckens had with EFSA in the two years following her departure, I can confirm that, from our records, she participated in the following events or meetings:

1. Meetings between DG SANCO of the European Commission, EFSA and EuropaBio, 5 March 2009, from 10.00 to 12.00 hrs and 3 March 2010, from 15.00 to 17.00 hrs, Brussels, Belgium. Participating EuropaBio members: Bayer CropScience, Dow Agrosciences, Pioneer, Syngenta, Monsanto, BASF Plant Science;
2. EFSA GMO workshop with Stakeholders: EuropaBio and applicants, 16 June 2009, from 9.00 to 17.00 hrs., Berlin, Germany. Participating Stakeholders: EuropaBio, Bayer CropScience, Dow Agrosciences, Pioneer, Syngenta, Monsanto, BASF Plant Science, Limagrain, AVEBE;
3. EFSA Technical meetings of EFSA with Stakeholder(s): EuropaBio and applicants: 5 March 2009, from 9.00 to 16.30 hrs. and 29 April 2009, from 14.00 to 15.30 hrs at EFSA's premises in Parma, Italy and in Gent, Belgium. Participating Stakeholders: EuropaBio, Bayer CropScience, Dow Agrosciences, Pioneer, Syngenta, Monsanto, BASF Plant Science, Ajinomoto, Novo Nordisk A/S

I trust that the above may address your questions and request. I remain at your disposal should you need further information on this matter.

Yours sincerely,



Catherine Geslain-Lanéelle