



Decision on how the European Commission involved stakeholders and managed conflicts of interest in reviewing the protection goals for assessing environmental risks of pesticides (case 1402/2020/TE)

Decision

Case 1402/2020/TE - **Opened on** 15/09/2020 - **Decision on** 08/11/2021 - **Institution concerned** European Commission (No further inquiries justified) |

The case concerned an ongoing review by the European Commission of the criteria for assessing environmental risks in pesticides, the 'specific protection goals'. The complainant, an environmental organisation, was concerned with the method being proposed and alleged that there are conflicts of interest with the experts involved in devising this method.

The Ombudsman opened an inquiry into one aspect of the complaint, which concerned the Commission's selection of an expert in a stakeholder workshop that took place at the beginning of the review in September 2019. The Ombudsman noted that the Commission had not asked the expert in question to submit a declaration of interest ahead of this workshop.

The Ombudsman took the view that the Commission should have required the expert to submit a declaration of interest. This is because of the nature of the workshop, which concerned the implementation of EU legislation in a controversial area, the role of the expert therein and the fact that the expert was presented as being independent. The disclosure of any interests, which could give rise to a conflict of interest, is essential to ensure public trust in the policies that result from such processes and the legitimacy of such policies in the eyes of the public.

As the Commission asked the expert to submit a declaration of interest in the meantime, the Ombudsman does not see the need to pursue the matter further. Having said that, the Ombudsman expects that the Commission will require, assess and publish declarations of interest of experts invited in their personal capacity to similar future events, and she is making a suggestion to that effect.

The Ombudsman also examined the complainant's claims regarding the substance of the declaration of interest, namely that it was incomplete and that the Commission did not assess it in order to identify any conflicts of interest. The Ombudsman found the Commission's assessment to be reasonable. She thus closed the inquiry.

Background to the complaint



1. EU law requires plant protection products (commonly referred to as 'pesticides') to have " *no unacceptable effects on the environment* ". [1] The criteria to decide whether there are no such unacceptable effects are currently set out in several guidance documents developed for different environmental areas.

2. In 2019, the Commission initiated a project on 'specific protection goals' (SPGs), which aims at reviewing the existing guidance documents and decision-making criteria.

3. SPGs are defined by the European Food Safety Authority (EFSA) as the " *specific goals of an environmental risk assessment in terms of what to protect, where to protect it, over what time period and with what degree of certainty* ". [2] The SPG project draws on guidance documents developed by EFSA in 2010 [3] and 2016 [4] . These guidance documents, in turn, build on the concept of " *ecosystem services* ", which EFSA understands to be " *the benefits people obtain from ecosystems* " . [5]

4. As part of the SPG project, the Commission organised a stakeholder workshop on 25 September 2019, in which the complainant, an environmental organisation, participated.

5. On 30 October 2019, the complainant raised several concerns about the ongoing development of SPGs with the Commission. The complainant criticised the " *limited openness of the discussion and the assumed agreement on issues that we, as an environmental and public interest organisation, strongly disagree* ". In particular, the complainant claimed that:

- the fact that EFSA has been active on this topic for several years and that stakeholders are being involved only now shows that there is no openness;
- several experts involved in the drafting of EFSA's guidance documents of 2010 and 2016 are not independent, as they have been involved in the drafting of previous ineffective guidance documents and, furthermore, have worked with industry;
- the " *main expert* " invited by the Commission to the stakeholder meeting of 25 September 2019 has links to industry;
- EFSA's " *ecosystem services* " concept has no scientific basis, but focuses on human services at the cost of biodiversity; and
- the Commission should invite independent " *top-class scientists* " with no commercial interests to speak at the next stakeholder meeting.

6. On 27 November 2019, the Commission replied to the complainant, stating its intention to involve all parties concerned in the SPG project. It stressed that EFSA's guidance documents would be used as a " *starting point* " only and that alternatives to EFSA's method were not excluded. As regards the independence of the " *main expert* " in the stakeholder workshop, the Commission disagreed with the claim that a researcher, who has co-authored articles with industry or accepted funding from industry while being affiliated with a university, was automatically in a conflict of interest situation. Nevertheless, the Commission stated that it would be open to receive expert suggestions from the complainant and to invite two of them to the next workshop.

7. On 6 January 2020, the complainant contacted the Commission again and expressed fundamental concerns about the " *ecosystem services* " concept, which it considered to be in



breach of the EU law on pesticides. [6]

8. On 25 March 2020, the Commission replied to the complainant and reiterated its intention to have an open and transparent process involving all stakeholders. It stated that:

- As regards the complainant's concerns about the "ecosystem services" approach, "*[t]he PPP Regulation sets out that pesticides can only be used if no unacceptable effects on the environment are expected. Thus, it acknowledges that some effects can occur, but the details are not defined.*

The question is where to draw the line between acceptable and unacceptable; i.e. what, where and how to protect". As existing guidance documents on protection goals lack a horizontal approach and are partly outdated, the Commission launched the SPG project. As a basis for this project, the Commission has been using EFSA's guidance documents on SPGs, which build on the "ecosystem services" concept.

- As regards the invited experts, the Commission informed the complainant on 16 December 2019 that it had considered all 16 experts proposed by the complainant and had invited two of them to the workshop. However, none of them attended.

9. On 18 August 2020, the complainant turned to the Ombudsman.

The inquiry

10. The Ombudsman opened an inquiry into one aspect of the complaint, which concerns the Commission's selection of the 'main expert' in the stakeholder workshop that took place on 25 September 2019. In particular, she asked the Commission to explain:

- the criteria the Commission used to select the expert in question;

- whether the Commission distinguishes, in such workshops, as it does in expert groups, between different types of participants, for example, between those that are being invited in their personal capacity (who are to act independently and in the public interest) and those that are invited to represent the interests of stakeholders;

- how the Commission ensures a balanced representation of areas of interest in such stakeholder workshops.

11. On 22 February 2021, the Ombudsman received the reply of the Commission. The complainant provided its comments on the reply on 4 April 2021.

12. On 28 September 2021, the Ombudsman's inquiry team met with representatives of the Commission to clarify outstanding issues. The complainant provided its comments on the meeting report on 17 October 2021.

Arguments presented to the Ombudsman

By the Commission

13. In its reply to the Ombudsman, the Commission elaborated on the nature of the workshop that took place on 25 September 2019. It said that this workshop was one of "two similar training workshops" at the start of the SPG project in 2019. While the first training workshop was organised for experts nominated by Member States, the second training workshop was organised for experts nominated by stakeholders and from academia. The aim of these workshops was to inform experts about the SPG project, to achieve a common understanding of the EFSA method, and to clarify the questions to be addressed during the



project.

14. The Commission further explained that the “lecturers” in these workshops were speakers from the Commission, EFSA and one external speaker - that is, the expert in question. The expert was asked to provide participants with “the needed scientific background on the concept of ecosystem services”.

15. The Commission also informed the Ombudsman of a third workshop that took place in February 2020, in which all experts nominated by Member States and stakeholders participated jointly. The objective of this workshop was “no longer training” but to start developing SPGs. Again, the Commission invited the expert in question “to participate in order to have an expert on ecosystem services in the room and to provide continuity of the discussions”.

16. The Commission then replied to the Ombudsman’s questions.

1. On the criteria for selecting the expert in question

17. The Commission considered that “it would not be correct to refer to the expert in question as the ‘main’ expert in the stakeholder workshop, as [the expert’s] role was minor”. The expert “did not influence the discussions on the usefulness of the EFSA method”, but gave a background presentation on the ‘ecosystem services’ concept. Such a background presentation was considered important because the EFSA method uses the concept and, in order to be able to use it, participants needed to acquire a good understanding of it.

18. As regards the selection criteria, the Commission explained that it was looking for a well-recognised scientist from academia with proven experience in ecosystem services and environmental risk assessment of chemicals. It also considered it necessary that the expert had proven didactic skills and the ability to explain complex environmental issues to a wide audience. The Commission considered that the expert in question clearly fulfilled these criteria.

2. On the independence of the expert

19. The Commission took the view that, given the “minor role” of the expert in the two training workshops, “no situation of a conflict of interest could arise”.

20. Ahead of the joint workshop in February 2020, the Commission asked the expert in question, as well as the other experts from academia, who were invited in their personal capacity, to fill in a Declaration of Interest (DoI).

21. On substance, the Commission emphasised that it does not consider the expert in question to be in a conflict of interest situation:

- First, the Commission reiterated its view that a researcher, who has co-authored articles



with industry or accepted some funding from industry while being employed by a university and receiving research funding from different sources (including from public authorities), is not automatically in a conflict of interest situation.

- Second, the Commission disagreed with the view that the CARES project, [7] in which the expert in question is the lead researcher, is exclusively industry-driven: "*While it is supported by Cefic [the European Chemical Industry Council] under its European Chemical Industry Council Long-Range Research Initiative (Cefic LRI), it provides for wide participation from academia and regulatory bodies, which is a usual practice in research projects ."*
- Third, the DoI of the expert in question covers the five years prior to the workshop in February 2020. In this DoI, the expert transparently listed the European Chemical Industry Council among the sources of research funding.

22. Finally, the Commission noted that the two training workshops in 2019, like the joint workshop of February 2020, were "*ad-hoc events*" and therefore not covered by its horizontal rules on expert groups. [8]

3. On a balanced representation of areas of interest

23. The Commission explained to the Ombudsman that, prior to launching the SPG project, it carried out "*a comprehensive stakeholder mapping to identify all relevant stakeholders*". This mapping included the 57 members of the 'Advisory Group on the Food Chain and Animal and Plant Health', [9] a Commission expert group, and "*other stakeholders which are relevant for discussions on protection goals related to the use of pesticides*". In total, 80 stakeholder organisations with different interests were contacted to express interest in the SPG project. Overall, the Commission considered that there was a balanced representation of stakeholders.

By the complainant

- 24.** The complainant made the following comments on the Commission's reply:
- It makes no sense that the Commission acknowledges that the expert in question gave a background introduction on 'ecosystems services' but still attributes this expert a 'minor role' in the workshop;
 - The expert is not a well-recognised scientist, as claimed by the Commission;
 - The Commission was wrong not to ask for a DoI for the training workshops in 2019, and to ask for the 2020 workshop only. The complainant also claims that the DoI is incomplete and that the Commission did not assess it properly.
 - There was no balanced representation in the training workshop "*as commercial interest (few hundreds of companies) obtained 20 seats (participants) as compared to the public organisation (representing 500 million of EU citizens) with 4 seats (participants)*".

The Ombudsman's assessment

On the Declaration of Interest (DoI) requirement



25. The Ombudsman understands that the Commission selected the expert in question because she was “ *a well-recognised scientist from academia* ”. The expert was thus invited in her personal capacity, so as to act independently and in the public interest. The Ombudsman also understands that the Commission did not require the expert to submit a DoI ahead of the two training workshops in 2019, but only at a later stage, for the joint workshop in February 2020.

26. The reasons the Commission did not require the expert to submit a DoI ahead of the two training workshops seem to be, first, what it refers to as the expert’s minor role in the two training workshops and, second, the fact that the training workshops were “ *ad-hoc events* ” and, therefore, excluded from the scope of the Commission’s horizontal rules on expert groups (which require that experts appointed in their personal capacity submit a DoI).

27. As regards the first reason, the Ombudsman notes that the expert’s role in the two training workshops was to “ *lecture* ” participants on the ‘ecosystems services’ approach. The Commission itself, in its reply to the Ombudsman, considered this background presentation “ *important* ”, as the EFSA method, the “ *starting point* ” of the SPG project, builds on the ‘ecosystems services’ concept. In light of this, the Ombudsman is not convinced by the Commission’s statement that the expert in question played a minor role in the training workshops and, therefore, no situation of a conflict of interest could arise.

28. As regards the second reason, the Ombudsman notes that the aim of the two training workshops was to achieve a common understanding of the EFSA method as the basis for the ensuing development of SPGs. It is thus reasonable to assume that the two training workshops formed an integral part of the SPG project. The SPG project, in turn, concerns “ *the implementation of Union legislation, programmes and policies, as well as coordination and cooperation with Member States and stakeholders in that regard* ”. [10] This legislation concerns a controversial area, that is, the environmental risk assessment of pesticides.

29. The rationale for the requirement to submit a DoI in the Commission’s horizontal rules on expert groups is to disclose any circumstances that could give rise to a conflict of interest in the development of EU policies, so as to “ *ensure the highest level of integrity of experts, as well as public confidence in the Commission’s activities* ”. [11]

30. The Ombudsman considers that this rationale also applies to the selection of the expert in the training workshops. This is because of the nature of these workshops, the role of the expert therein and the fact that the expert was presented as being independent. In fact, it is precisely the absence of a DoI that generated mistrust on the part of the complainant in this case. The disclosure of any interests, which could give rise to a conflict of interest, is essential to strengthen public trust in the ensuing policies, and the legitimacy of these policies in the eyes of the public. Arguably, this is all the more important where the underlying scientific issues relate to the health and safety of citizens, and the protection of the environment.

31. The Ombudsman therefore takes the view that, independent of whether or not the training workshops were formally covered by the horizontal rules on expert groups, the submission of a DoI ahead of the workshops in 2019, as well as an assessment of the DoI



and its publication, would have been appropriate. However, as the Commission requested the expert to submit a DoI for the February 2020 workshop in the meantime, the Ombudsman does not see the need to pursue this matter further. The Ombudsman expects, however, that the Commission will require, assess and publish DoIs of experts invited in their personal capacity to similar future events. She will make a suggestion to that effect.

On the substance of the DoI

32. The Ombudsman also examined the complainant's claims regarding the substance of the DoI, namely that it was incomplete and that the Commission did not assess it in order to identify any conflicts of interest. In its exchanges with the Commission, [12] the complainant particularly referred to the expert's involvement with the European Chemical Industry Council (Cefic), the CARES (Chemicals: Assessment of Risks to Ecosystem Services) project, and the European Centre for Ecotoxicology and Toxicology of Chemicals (ECETOC) - an industry association.

33. On the **completeness of the DoI**, the Ombudsman notes that the expert's DoI lists research support from the European Chemical Industry Council Long-Range Research Initiative (Cefic LRI) between 2014 and 2020. The Ombudsman further understands that the CARES project is supported by the Cefic LRI and is thus covered by the declared interests.

34. The expert was also involved in a task force on 'ecosystem services' of the industry association ECETOC, which resulted in the publication of a technical report in December 2015. [13] This involvement does not appear in the DoI.

35. During the meeting with the Ombudsman's inquiry team, the Commission representatives explained that the ECETOC task force was composed of several experts who met five times to provide expertise. Four out of these five meetings took place in 2013 and 2014 (before the relevant five-year period to be taken into account for the DoI). The last meeting took place at the very beginning of the relevant time-period, in February 2015. The expert was not remunerated for the participation in the five meetings and there had been no separate research funding for the task force. The funding for the research, which led to the ECETOC technical report, was funded by the Cefic LRI, which the expert had declared in the DoI. In view of this, the expert did not consider it necessary to declare the involvement in the ECETOC task force separately.

36. The Commission representatives further noted that, when the Commission received the DoI in early February 2020, it did not contact the expert in relation to the concerns raised by the complainant in an email of 30 October 2019 about the expert's involvement in the ECETOC task force. The Commission representatives said that they had previously received extensive correspondence from the complainant, which they had already answered, and that, therefore, they did not verify again every claim made. Normally, however, the Commission would follow up on any concerns brought to its attention concerning the DoIs of invited experts. In such cases, the Commission would consult the expert in question and inform the party, which raised the concern, about the outcome.



37. The Ombudsman notes that experts declare, on their honour, that their DoIs are complete and accurate, to the best of their knowledge. The Commission's horizontal rules on expert groups say that "[e]ach individual shall assume full responsibility in relation to the content of the declaration submitted". [14] Omissions cannot, therefore, be attributed to the Commission. Having said that, the Ombudsman expects that, should concerns about the completeness and/or accuracy of a DoI be brought to its attention, the Commission would follow up on such concerns and take adequate steps. In this case, the Commission contacted the expert regarding the participation in the ECETOC taskforce only *after* the Ombudsman's involvement. However, the Ombudsman acknowledges the particularity of this case, as the complainant had raised its concerns months *before* the expert had submitted the DoI. She understands that the Commission cannot reasonably be expected to go through and cross-reference all *past* correspondence when reviewing a new DoI. The Ombudsman trusts that, normally, the Commission will follow up on all concerns raised.

38. On the **assessment of the declared interests**, the Ombudsman notes that, where an expert declares an interest, the horizontal rules on expert groups require the Commission "to have it screened in accordance with this Decision, in order to determine if a conflict of interest exists". From the Commission's written reply to the Ombudsman, it appears that the Commission assessed the DoI and considered that there was no conflict of interest that would have compromised the expert's capacity to act independently and in the public interest, when participating in the February 2020 workshop. In particular, the Commission considered that "the fact that a researcher has co-authored articles with industry or accepted some funding from industry while being employed by a university and receiving research funding from different sources (including from public authorities), does not constitute an automatic conflict of interest".

39. The Ombudsman considers the Commission's assessment reasonable. The fact that a person has co-authored academic work with persons from industry does not *automatically* mean that such a person would be beholden to industry, and thus conflicted. The receipt of funding by industry, in contrast, might give rise to a degree of loyalty to those who paid that person. The following should be taken into account in this context. If the person received funding from many sources, including a salary as an academic, and incidental limited funding from industry sources, the funding from industry would be unlikely to create an *appreciable* effect of loyalty towards industry. The Ombudsman understands that, in this case, the Commission verified the share of funding from the private sector, including the funding received from the Cefic LRI, compared to the total budget of the expert's research activities and concluded that this share was within the limits of the rules established by EFSA.

On balanced representation

40. The Commission explained in its reply to the Ombudsman that it invited 80 stakeholder organisations to nominate experts to the stakeholder workshops. These 80 stakeholder organisations included the 57 members of the Advisory Group on the Food Chain and Animal and Plant Health. Out of the 80 stakeholder organisations that the Commission invited,



eleven were environmental organisations. The Commission further explained that, out of the eleven invited environmental NGOs, four participated in the workshops.

41. The Ombudsman considers the Commission's explanation of how it invited 'relevant stakeholders' to the workshop reasonable. The Commission cannot be held responsible for invited stakeholders not nominating experts and/or participating in the workshops. The Ombudsman also notes that the complainant did not identify any additional stakeholders that the Commission, in its view, should have invited to the workshops.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The Ombudsman considers that the Commission should have required the expert in question to submit a declaration of interest ahead of the two training workshops in 2019. This is because of the nature of these workshops, the role of the expert therein and the fact that the expert was presented as being independent.

However, as the Commission asked the expert in question to submit a declaration of interest for the February 2020 workshop in the meantime, the Ombudsman does not see the need to pursue this matter further.

The complainant and the Commission will be informed of this decision .

Suggestion for improvement

The Commission should require, assess and publish declarations of interest of experts invited in their personal capacity to similar future events, which concern the implementation of Union legislation, programmes and policies.

Emily O'Reilly European Ombudsman

Strasbourg, 08/11/2021

[1] Article 4(3)(e) of Regulation 1107/2009 concerning the placing of plant protection products on the market:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009R1107> (hereafter: 'EU Pesticides Regulation')

[2] See <http://www.efsa.europa.eu/en/glossary/specific-protection-goals-era-pesticides>

[3] <https://www.efsa.europa.eu/en/efsajournal/pub/1821>

[4] <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2016.4499>

[5] EFSA uses the definition of the Millennium Ecosystem Assessment (2005):



<http://www.unep.org/maweb/documents/%3fdocument.300.aspx.pdf>

[6] Article 4(3)(e) of the EU Pesticides Regulation, which says that there should be no unacceptable effects on the environment.

[7] Further information on the CARES (Chemicals: Assessment of Risks to Ecosystem Services) project is available here:

<http://cefic-lri.org/projects/eco27-ushe-chemicals-assessment-of-risks-to-ecosystem-services-cares/>

[8] Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups, available here:

https://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_COMMISSION_DECISION_EN.pdf
(hereafter: 'Commission Horizontal Rules on Expert Groups')

[9] The Advisory Group on the Food Chain and Animal and Plant Health is a Commission expert group that was established by Decision 2004/613/EC, so as to consult stakeholders in an open and transparent way at the European level during the preparation, revision and evaluation of EU food legislation. Further information is available here:

<https://ec.europa.eu/food/horizontal-topics/expert-groups/advisory-groups-action-platforms/advisory-gr>

[10] Wording of Article 3(c) of the Commission Horizontal Rules on Expert Groups, on the role of expert groups.

[11] Article 11 of the Commission Horizontal Rules on Expert Groups.

[12] Email from the complainant to the Commission of 30 October 2019.

[13] The document has been published as ECETOC Technical Report no.125: Chemical Risk Assessment – Ecosystem Services, and can be read online and downloaded at

<https://www.ecetoc.org/publication/tr-125-chemical-risk-assessment-ecosystems-services/>

[14] Article 11(2) of the Commission Horizontal Rules on Expert Groups.